



KAISERSLAUTERN LEGAL INFORMER

IN REMEMBRANCE OF JOE HALL, 1949-2014



by Joerg Modellmog

This special edition of the Kaiserslautern Legal Informer is dedicated to the memory of Joseph James Hall, whose decades of service to the Judge Advocate General's Corps as both a Judge Advocate and a Department of the Army Civilian Attorney inspired generations of Army lawyers and paralegals. Joe's tragic and premature death on November 5th deprived this command of its Chief of International Law, a role he had played to perfection since 2006.

To celebrate Joe's remarkable career, we have anthologized articles he wrote for this newsletter over the last seven years so that our readers will remember the passion and professionalism Joe brought to the practice of international law. These articles remain as informative, relevant, and compelling as on the day they were first published. Joe's biography and a eulogy delivered at his memorial service are also included.

Our hearts go out to Joe's family. Joe will be sorely missed by all those who had the privilege to know him and work with him.

"Think not only upon his passing; remember the glory of his spirit."



*United States Army
Judge Advocate
General's Corps -
America's Oldest
Law Firm*

Joe Hall — Army Lawyer Par Excellence

Joseph ("Joe") James Hall was born on Columbus Day 1949 in Pittsburgh, PA. He was commissioned as an Infantry Officer in 1971. Following assignments as a Military Intelligence Officer in Büdingen, Kaiserslautern, and Mannheim, Germany, Mr. Hall attended Boston College Law School under the Funded Legal Education Program. Following an assignment at Fort McPherson, GA, where he served as an administrative law, claims, and contract attorney and as Deputy Staff Judge Advocate, Mr. Hall served the JAG Corps in multiple international law and claims assignments in Germany, culminating as the last Commander of the U.S. Army Claims Service, Europe.

In 1995, Mr. Hall retired from the Army after more than 23 years on active duty and began a second career as a Department of the Army Civilian Attorney-Advisor assigned to the Mannheim Law Center, Office of the Staff Judge Advocate, 21st Theater Army Area Command (re-designated the 21st Theater Support Command and, later, the 21st Theater Sustainment Command). In 2006, Mr. Hall was promoted to GS-14 and assumed the position of Chief of the International Law Division, OSJA, 21st TSC.

Mr. Hall's military awards include the Legion of Merit, Meritorious Service Medal (2 OLC), Army Commendation Medal (1 OLC), Army Achievement Medal, and Parachutist Badge.

His civilian awards include the Meritorious Civilian Service Award (see page 20), three Superior Civilian Service Awards, the Commander's Award for Civilian Service, and the Achievement Medal for Civilian Service.

Mr. Hall earned a B.A., *cum laude*, in social science/international relations from Michigan State University, a B.A. in German studies from the University of Maryland, a M.Ed. from Oklahoma University, and a J.D., *cum laude*, from Boston College Law School. He served as an adjunct professor for Troy State University.

His military education included the Infantry Officer Basic Course (Honor Graduate), the Counterintelligence Course (Distinguished Military Graduate), the Judge Advocate Officer Basic Course and Graduate Course (Honor Graduate), the U.S. Army Command & General Staff College, and the U.S. Army War College Strategic Studies Course.

Mr. Hall is survived by his wife, Jutta, two daughters, Katja and Lisa, a grandson, Ryan, and two sisters.

Lieutenant Colonel (Retired) Hall will be buried at Arlington National Cemetery with full military honors.



KAISERSLAUTERN LEGAL SERVICES CENTER

Building 3210 Kleber Kaserne

Legal Assistance 483-8848

Tax Assistance 483-8848

Claims 483-8855/8856

International Affairs 483-8854

Trial Defense Service 483-8397

[Civilian: 0631-411-XXXX]

Administrative Law 484-8043

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[Civilian: 0631-413-XXXX]



**Joe Hall was a Distinguished
Military Graduate of Michigan State
University's ROTC program in 1971.**

A Memorial Tribute to Joseph James Hall

Text and photos from a eulogy delivered by the author at a memorial service in Daenner Chapel on November 21, 2014

by Steve Smith

We gather together today to celebrate the life and accomplishments of Joseph James Hall, whose life was cruelly cut short on November 5, 2014, just a few weeks after his 65th birthday, following a heroic long-term battle with cancer.

This is a requiem for a good man. It is a celebration of a life well-lived, of a man who inspired us all with his wit, wisdom, compassion, competence, and tremendous moral courage.

Joe's biography is printed in your program. It outlines the high points of a remarkable career than spanned over 42 years of federal service, but it only begins to tell Joe's story.

Joe's father was an attorney for Allegheny County, Pennsylvania, and his mother was a teacher and guidance counselor. Joe was not the first lawyer in his family to serve in Europe. His father was a JAG Colonel who had claims responsibility for the Benelux countries during World War II. The apple did not fall far from the tree.

Joe was one of the best-educated and most-decorated lawyers in the Army. He was a former Officer-in-Charge of the Stuttgart Law Center and a proud member of the VII Corps "Jayhawk" Office of the Staff Judge Advocate. He served as Deputy of the International Law Division of the USAREUR Office of the Judge Advocate in Heidelberg, where he worked with legendary international law experts like George Bahamonde, Bob Dunn, PJ Conderman, and Hans-Jürgen Howoldt. Joe was the last JAG officer to serve as Commander of the U.S. Army Claims Service in Mannheim. When he retired from active duty in 1995 after over 23 years of dedicated service to the U.S. Army, a special ceremony was held in his honor on the parade ground of Campbell Barracks in Heidelberg, with troops marching and flags flying. Joe went out with a bang, but his career as an Army lawyer was far from over.

Joe spent the next 19 years of his life serving as a civilian attorney for this command, first as a Claims Attorney in Mannheim, then as Chief of International Law in Kaiserslautern. He never retired. He never gave up. He worked for us until his dying day; and he accomplished so much along the way.

Through it all he was a loving husband to his wife, Jutta, who taught him to speak flawless German, and a devoted father to his daughters, Katja and Lisa, who went to college in Indiana, Pennsylvania, and settled in the area where their father grew up. He was an adoring grandfather to Katja's son, Ryan, who is only five years old. Joe was also a deeply religious man, who read the Bible in his study every day.

In short, Joe lived "A Wonderful Life." You are all familiar with the Frank Capra film by that title. I always saw Joe Hall as a modern-day George Bailey, the character played so memorably in that film by Jimmy Stewart, another stand-up guy from western Pennsylvania. George Bailey ran a building and loan association in a little town called Bedford Falls and took care of the needs of his neighbors. He provided them with cash and emotional support, and served as the moral compass of his community. He kept his town from becoming a sleazy "Pottersville," just as Joe helped maintain the quality of life in the military community by dispensing cash to deserving claimants and looking after the welfare of his clientele.

Joseph James Hall
1949-2014

A Wonderful Life

A Memorial Tribute (continued)

When Joe was first hospitalized, I sent him this card that I found in the Jimmy Stewart Museum in Indiana, Pennsylvania, and urged him to “Hang Tough! Fight On, Joe! We need our George Bailey back!”



George Bailey, of course, was a fictional character. Joe Hall was the real deal. This is the Joe I met when I moved to Kaiserslautern to become Chief of Client Services for this command. He taught me many valuable lessons about how to run a claims office, how to process claims, and how to treat claimants. He considered the Mannheim Military Community to be his neighborhood, and his job was to heal the hurt that comes from overseas moves and vehicle shipments, floods and other disasters, and put his neighbors back in the position they were in before they sustained damage or loss.

Where did he derive his inspiration? From his hometown hero, Mr. Rogers. Most of you remember “Mister Rogers’ Neighborhood,” the popular public television program that was produced in Pittsburgh. Joe identified strongly with Fred Rogers. I remember watching Joe teach classes on claims office management at the annual USAREUR claims conference. He would begin his class by dressing up as Fred, slipping into a cardigan sweater, donning a pair of comfortable slippers, and welcoming his neighbors in for a friendly chat. He stressed the need for operating a “kinder and gentler” claims office, and reminded us that, fundamentally, the claims program is a morale program.



Not surprisingly, people loved to work for Joe Hall. He knew how to get the best out of those he supervised. He and his claims examiner in Mannheim, Doris Brummer, were an unbeatable team and remained lifelong friends.

Joe and Doris were devastatingly good at their jobs, repeatedly winning The Judge Advocate General’s Award for Excellence in Claims Support.

making the Mannheim Claims Office the gold standard when it came to customer service, the office by which all other claims operations in Europe were judged.



A Memorial Tribute *(continued)*

It was a sad day when we had to close the Mannheim Law Center due to the drawdown in Europe. You can see Joe in this picture at the farewell event, remaining loyal and steadfast to his Mannheim neighborhood to the very end.



Advocates, including Colonel Corey Bradley (second from left), who went on to become the Staff Judge Advocate for the Military District of Washington, and Colonel PJ Perrone (second from right), who currently serves as the Staff Judge Advocate of the 4th Infantry Division.

It was at about the time this shot was taken that Joe was diagnosed with cancer and his physicians estimated he had a year left to live. Joe fought back hard and beat the odds. He did not quit. He did not give up. He made the most of every day he had left, and lived an additional five-and-a-half years.

During that period Joe did what he loved doing most: foster a close relationship with our German jurist



counterparts with annual Law Day events, make office calls on German justice officials, and organize visits to German courts. Joe also worked with the President of the Regional Court in Saarbrücken to set up seminars where German and American jurists could compare notes and develop a better understanding of our respective systems of justice. Joe eschewed the limelight; you can barely see him in the background of this photo, off to the right, quietly working behind the scenes to achieve better *"Zusammenarbeit,"* cooperatively working to maintain good relations with our host nation colleagues. He was an absolute master of the art of international law.



A Memorial Tribute (continued)

Some of you were present when Colonel Ralph Tremaglio presented Joe with this length of service certificate, honoring his more than 40 years of federal service. Joe endured tremendous physical discomfort, repeated hospitalizations, and debilitating treatments. His visits to the office on days like this, the constant support and well-wishes of his supervisors and co-workers, and the nurturing care of his devoted wife were what kept him going.



Very few of you had an opportunity to witness Joe's final ceremony, when the USAREUR Judge Advocate, Colonel Scott W. Arnold, presented him with the Meritorious Civilian Service Medal, the civilian equivalent of the Legion of Merit, honoring his outstanding service to USAREUR in the field of international law. We had hoped to present this award to him in our courtroom, where our far-flung branch

offices could witness it by VTC, but Joe was too weak to travel, so a handful of us went to his home in Schwetzingen on October 23, 2014, to honor his service to our nation. He died at home 13 days later.

At the conclusion of our successful 2014 Law Day luncheon in May, Joe asked me to take this photograph of him with our guest of honor, the then-Undersecretary from the Rheinland-Pfalz Ministry of Justice, Frau Beate Reich. He may have had a premonition that this could be his last Law Day. He wanted something to remember it by. Joe was a happy man that day. This event was the culmination of a lifetime of service dedicated to bringing our nation and our host nation closer together. This is the way Joe would want you to remember him.

Joe Hall was an inspiration to us all. He was our George Bailey, our Fred Rogers, our champion. I was honored to call him my mentor, my friend, and my brother. He will be deeply missed.

Rest in peace, Joe.



Europe Without Borders

"Not so fast, Bucko..."

by Joe Hall

In 1985, five of the European Union (EU) countries agreed to facilitate travel within their alliance by generally eliminating border passport checkpoints. To do this, they signed a treaty at the city of Schengen in Luxembourg – the so-called “Schengen Agreement.”

The Schengen Agreement now includes over 25 European countries. While certain EU member states like Ireland and Great Britain decided not to join the Schengen Agreement and, therefore, still have mandatory passport checks in place, some non-EU member states like Iceland, Norway, and Switzerland did join the Agreement.



Memorial at Schengen, commemorating the signing of the Schengen Agreement. Schengen is located on the Mosel River in the beautiful German-French-Luxembourg tri-border area approximately 90 minutes from Kaiserslautern. A short day-trip there will reveal the benefits of the treaty.

So, now, when you cross the border into any neighboring country of Germany, you may well see deserted passport control facilities. But be careful and be prepared. That open border may not be so open.

Regarding passport control. Unfortunately, the United States is not a member of the Schengen Agreement. What that means to U.S. Forces, members of the civilian component, and family members is that you still need to have your passport with you when you take leave/leisure travel from Germany into any other European country. As an alternative, uniformed personnel normally can travel on their military ID cards and leave or travel orders.

You may not get stopped at the border, but remember the phrase above – “generally eliminating.” You still could be stopped and checked, not only at the border (especially at times of heightened security) but at any time and anywhere during your visit. Without your passport (or military ID card and leave form or travel orders), you are subject to being arrested and possibly fined/prosecuted and/or expelled from the country you had planned to visit. Definitely, a lousy day-trip experience.

Then there are custom controls. Start with Switzerland. Although the Swiss have generally dropped their passport controls, they still have an active customs control policy – so you have to slow down when entering Switzerland and may be stopped at the border to declare your goods or have your trunk inspected. The other Schengen countries generally have dropped their customs inspections, but inspections still could happen at the border or they could be conducted by roving customs patrols several miles from the border.

Finally, for official travel requirements, you need to have the appropriate ID card and NATO travel orders for military, or an official duty passport for US Government civilian employees.

The electronic foreign clearance guide: <https://www.fcg.pentagon.mil/fcg.cfm> sets out required documentation, approvals, and clearance lead times in detail, and should be consulted well in advance of any official or unofficial travel you intend to take outside of Germany.

So, get out there and enjoy visiting the other countries of Europe, but when it comes to your ID card and leave or travel orders, or your civilian passport - like the commercial says, “Don’t leave home without it.”



"What Do You Mean, I'm Going to German Jail?!!!"

by Joe Hall

"But I'm a Soldier -- the Germans can't try me!" Wrong.

"How about me? I'm a DoD civilian – and me, I'm a family member." You, too, can be tried by the Germans and placed in German prison.

We live in Germany. We are all subject to German criminal and civil laws. However, under the NATO Status of Forces Agreement (SoFA) and its German supplement, special rules have been implemented regarding which country — the U.S. or Germany — will try a particular criminal case.



In general, the Germans have waived their right to prosecute for crimes committed by our uniformed military members. However, the Germans have reserved their right to recall their waiver and try a case if it is of special interest to the German community.

For our civilians, both DoD employees and all family members, the Germans have the primary right to try them for criminal offenses, since we can only try our civilians by court-martial in time of war or if they are in an area of contingency operations (*e.g.*, "downrange").

What Happens if I am Caught Committing a Crime?

Let's look at the process:

- First, the German police will likely arrest you. If they do, you should let them know that you have SoFA status and would like them to notify U.S. authorities.
- If you are military, you will usually be released to the MPs or to your unit. If you are a DoD civilian or family member, if the offense was serious, you will probably be placed in German pretrial confinement.
- If you have been released pending trial, come to the local legal office (Kleber for Army, Ramstein for Air Force) International Law Section. They will brief you on what you can expect as help from the U.S. Government and how the German criminal prosecution system works.
- If you are in pre-trial confinement, ask the prison officials to contact the U.S. Forces legal liaison office (the Kleber or Ramstein international law offices). The international law paralegals will do "house calls" and come to the prison to brief you. If you are in pre-trial confinement, you will probably stay there for three to eight months depending on how complicated the case is.

What Help Will the U.S. Government Provide?

If you are in German pre-trial confinement, the international law liaison paralegals will visit you once a month and bring a chaplain with them if you want; also, they will arrange for an initial medical exam and for quarterly follow-up medical exams by a U.S. Forces doctor.

[continued on page 9...]

Going to German Jail... (continued)

More good news – the U.S. Government will normally pay the cost of your reasonable attorney fees; you select the attorney and the Government will pay his/her reasonable, customary local fees. (If you hire the most expensive attorney in town, you will likely pay the amount of his/her fees considered above average.) The U.S. Government will also pay various court costs that normally would be charged to you.

At your trial, a U.S. Government Trial Observer observes the proceedings to ensure that all your rights are respected (*e.g.*, right to a translator; to know the charges; some right to cross-examine witnesses). While German trials may differ to some degree from U.S. trials, years of experience have shown that the German trial courts routinely observe the accused's guaranteed rights and that the proceedings are fair.

Some Practical Tips:

- If you are guilty, it is probably best to admit it early on. Assuming responsibility for your actions and expressing remorse are significant factors in determining the length of your sentence. A sincere apology to a victim is looked at very favorably by German courts.

- When you are in pretrial confinement, prison visits by relatives and friends must be approved by the prosecutor; the international law office can help arrange those approvals if you do not have a defense counsel to do that.

- Don't expect your German defense attorney to visit you more than one time (if that) while you are in pre-trial confinement. Don't expect your attorney to make many objections at trial; and don't expect him to do very much cross examination of witnesses. In the German system, the judge is responsible for examining the witnesses and for finding the truth – think of the procedure more like that of an Article 15 hearing or a Summary Court proceeding. The judge will ask the questions that go to excuse or mitigate the offense, as well as ask the questions that will prove culpability.

- At any German hearing, organize your thoughts before you speak, and speak up. Avoid slang. Don't chew gum. Think of the court proceeding as if it were the most important job interview you will ever have – if you don't make a good impression in a job interview, you won't get the job, but as a defendant in German court, you might well "get the works."

Commanders' Responsibilities:

Commanders have certain SoFA-related command responsibilities, as well as responsibilities to members of their commands who are pending German criminal prosecution or who are confined in German jails. Among those are:

- Report incidents involving breaches of the German criminal law to the supporting international law office.
- Do not initiate UCMJ action, including Article 15s, until jurisdiction is resolved.
- If a Soldier is in German jail, inventory, secure, and safeguard his property.

Army in Europe Regulation 550-56 describes the foreign criminal jurisdiction procedures in Germany, and it provides a much more detailed description of how that system works than what is described here. If you or a member of your command is unfortunate enough to run afoul of the criminal law in Germany, read that regulation.

The Pitfalls of Paintball & "Airsoft" Guns

"Toto, I don't think we're in Kansas anymore..."

by Joe Hall

Around him in the darkness crickets chirped, a trickle of sweat rolled down his cheek and dripped onto his clinging camouflage T-shirt; with cramped muscles the warrior waited wedged deep in the brush, ready for the moment when his enemy would step into the clearing.

A snap – a cry – blinding lights – *"Waffen runter!" "Polizei - Waffen runter – Polizei!" "Waffen runter oder ich schiesse!!!"*

Next day's news: *"What started in fun, ended in tragedy last night when one of several dependent teenagers was shot by local police while the boy was playing 'capture the flag' using an 'Airsoft' pistol in the local German woods."*

A work of fiction? No. A true story? Almost. In Stuttgart on July 7, 2010, a dependent family member had a run in with the German police under the above type circumstances. Had one of the boy's friends not yelled out that the boy did not understand German, and had the German police not been able to understand what was said and then call out their command to drop the weapon in English, a tragedy could very well have occurred.

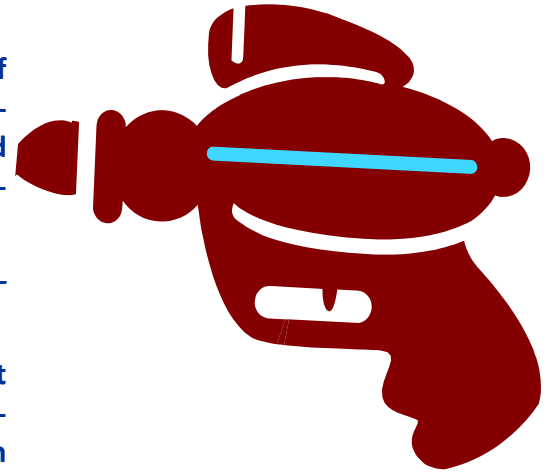
Gun laws and reactions to guns differ among the various states in the U.S. They vary much more between the U.S. and Germany. Playing guns, playing cowboy, playing cops and robbers, and young children going off with real guns to shoot squirrels and rabbits in the woods is common practice in the U.S. That kind of activity is much less common in Germany, where even hunting in the woods for adults is a very highly regulated and controlled activity.

With very little exception, while living in Germany, members of the U.S. Forces – uniformed, civilian employees, and family members – fall under German law, whether we are on-post or off. One of the laws we fall under is the German Weapons Law. This law impacts two popular pastime activities – the use of "Airsoft" guns, and paintball.

"Airsoft" Guns. The German Weapons Law generally does not apply to "toys." However, there is one big exception. It does regulate toy guns that look like real guns – unfortunately, that includes almost all "Airsoft" guns that are sold today. The rule is, if the gun (toy or not) gives the appearance of being a real gun (size, shape, color, etc.), that gun may not be carried around outside in public areas (e.g., outside your apartment or home). For violators, the gun will be confiscated and the individual is subject to administrative fine.

So, what if my 12-year-old son's "Airsoft" gun does not look like a real weapon; can he run around and shoot it in the housing area?

- No. "Airsoft" guns may not be used in public areas (housing areas or the woods). They can only be used in specially-designed shooting areas or possibly inside private residences/yards, but in any case,



[continued on page 11...]

Paintball & "Airsoft" Guns (continued)

wherever used, the area needs to be enclosed so that the pellets cannot go outside the boundaries of the facility. Third parties may not be endangered.

- Also, your 12-year-old is not authorized to have an "Airsoft" gun. For "Airsoft" guns of limited power (less than 0.5 joules), the minimum age is 14. For higher power "Airsoft" guns (greater than 0.5 joules), the minimum age is 18.

Paintball. Paintball markers (guns) usually do not look like real weapons, so that aspect of the German weapons law usually does not apply – but no matter, paintball markers and their use are also very strictly regulated in Germany.

German law dealing with paintball provides that a person normally needs to be 18 years old to play; paintball may only be played in specifically designed courses that will prevent a round from leaving the course property; the round being fired cannot exceed 7.5 joules in power (otherwise the marker is classified as a real gun); and the marker must have a special imprint stamped into it (a pentagram with a letter "F" in the center) in order to verify that its power does not exceed 7.5 joules.

Army in Europe Regulation 215-144 sets out rules and policy on paintball activities in USAREUR. You should consult that regulation and call the local MWR Rod and Gun Club for more specifics on paintball play. Possession of guns with greater than 7.5 joules of power is prohibited.

Remember these rules of thumb for "Airsoft" guns and paintball markers:

- No carrying any type of realistic looking guns, toy or not, in any public areas, including the woods.
- No playing "Airsoft" games or paintball in any outside areas not specifically designated and approved for that type activity.
- No shooting at neighbors, their pets, street lamps, or street signs.
- "Waffen runter" means, put your weapon down; and "Waffen runter oder ich schiesse" means put your weapon down or I'll shoot.

Editor's Note: Joe Hall was a man ahead of his time when he wrote this preventive law article four years ago. Anyone who has been following the news knows that Cleveland police recently shot and killed a 12-year-old boy who was playing with an "Airsoft" pistol that was missing the orange plastic tip that indicates it is not a real weapon.



We're On the Web!

Current and back editions of this newsletter and articles we've published on legal assistance topics are posted on the 21st TSC OSJA website at: <http://www.eur.army.mil/21TSC/sja/LegalAssist/LegalAssistance.asp>

Claims articles, information papers, brochures, and related information is posted at: <http://www.eur.army.mil/21TSC/SJA/Claims/Claims.asp>

The "KLI" is also posted on JAGCNet and shared with legal assistance and claims practitioners Army-wide.

In the Wrong Place, At the Wrong Time

A cautionary tale of tragedy, consequences, and criminal jurisdiction...

by Joe Hall

Unfortunately, there really are some folks with criminal tendencies, but not all those behind bars are hardened criminals; nor are all crimes planned or intended.

Sometimes everyday people become criminals and trusting innocents become victims, just because they were in the wrong place, at the wrong time, in the wrong circumstances.

One such scenario is date rape, a tragedy that typically occurs between 0200 and 0500 hours, and involves a volatile combination of alcohol and sex. It often stems from a celebration that went wrong, or sometimes through incomprehensible innocence betrayed. Besides sex offenses, in those dark hours a lack of sleep, too much alcohol, and other things can trigger crimes against property, assaults, and sometimes death: “want some fun?” – let’s break mirrors on parked cars and walk on car roofs; “want some excitement?” – let’s start a fire; “out of money?” – let’s beat up the taxi driver to skip out on the fare, or beat up the passer-by and steal his money. The possibilities are endless. And the consequences can be extremely serious.

In most every case, the perpetrator is caught – many times the crime is out of character for the perpetrator – “he’s a good Soldier; max’d his PT test; does his job really well,” but some innocent person still has to suffer the economic loss, inconvenience, physical pain, and sometimes lasting grief of what everyone, including at times the perpetrator, thinks was a stupid act. The perpetrator can wind up in confinement, lose money, be demoted, or get kicked out of the service, and perhaps live with a lifetime of guilt, “when I just wanted to go out and have some fun.”

The thought here is, anyone can become a criminal, or a victim – so be careful. If you are going out for late-night partying: choose your friends; stay with the group; know your alcohol limits; keep enough cash to pay for a taxi; and don’t put a knife or other weapon in your pocket just to feel safe – you could seriously hurt someone with it, or they could use it to hurt you.

What happens when a crime occurs, be it late at night or at any other time of day? Commanders often want to act quickly on the offenses. Sometimes, for the “good Soldier” when the offense or its consequences do not seem particularly serious, the commander’s intent is to put the event behind us and move on. In other more serious cases, the intent may be to get the case before a court-martial.

Can the commander just forget about the incident and move on? Can he take UCMJ action against the Soldier? The answer to both questions is, maybe. But before the commander acts or does not act, the issue of who has criminal jurisdiction over the case – the command or host nation authorities – has to be resolved.



[continued on page 13...]

In the Wrong Place, At the Wrong Time (continued)

Article VII of the NATO Status of Forces Agreement (SoFA) sets out the rules on who has criminal jurisdiction to prosecute offenses involving U.S. Forces members in Germany (and all the other NATO host nations).

- If the Soldier commits an offense against another Soldier, against a SoFA-status U.S. Forces civilian/dependent, or against U.S. Government property, the U.S. Forces/commander has primary jurisdiction and is free to take whatever administrative or UCMJ action he deems appropriate against the perpetrator.
- If the offense is committed against a person without SoFA status, or against any non-U.S. Government property, the host nation has primary jurisdiction over the matter. In such cases, the commander may not take any UCMJ action against the perpetrator, and must flag the Soldier, until the host nation releases jurisdiction to the U.S. Forces. Commanders need to get with their supporting JAG Trial Counsel to determine if/when the host nation has released its jurisdiction. In most all cases, at least in the Kaiserslautern area, jurisdiction is released relatively rapidly to the U.S. Forces.

As a postscript, once jurisdiction is released to the U.S. Forces, the commander is free to take whatever administrative or UCMJ action he deems appropriate. In deciding what action to take, however, one of the factors to consider is the effect the commander's choice of action will have on the local host nation community – the commander's action not only furthers order and discipline within the unit, it also serves the interests of justice in both the Army and the host nation.

The Military Extraterritorial Jurisdiction Act

by Joe Hall

Getting Away With Murder!

Berlin – Before “MEJA”

In the 1960s, 70s, 80s and 90s, U.S. Forces civilian employees and family members stationed in Berlin could commit crimes, even very serious ones like murder, and not be punished.

Why? First, Berlin was still an “occupied city” from World War II. For policy reasons, local Berlin courts had no jurisdiction over U.S. Forces or their civilian component members and family members. Second, in the late 1950s, the U.S. Supreme Court ruled that U.S. Forces affiliated civilians could no longer be tried by court-martial. So with no court having jurisdiction over them, our civilian component members and our family members could, literally, get away with murder.

This loophole in the law was one of the reasons why Congress eventually passed the Military Extraterritorial Jurisdiction Act (MEJA) (18 U.S.C. § 3261 *et seq.*)



[continued on page 14...]

Military Extraterritorial Jurisdiction Act (continued)

MEJA is a gap filler – it places our civilians under a U.S. District Court’s jurisdiction to try them for crimes that the U.S. Forces and the host nation cannot or will not.

The key elements for a MEJA case are:

- The offense constitutes a felony under U.S. Federal law.
- The offender is a U.S. Forces affiliated civilian (*e.g.*, member of the civilian component or a family member).
- The host nation has not and does not intend to try the case.
- The U.S. Department of Justice agrees to try the case.
- The case will be presented in a U.S. District Court and prosecuted by a U.S. Attorney.

A typical MEJA case would be when the crime was committed in the host nation (*e.g.*, Germany) and the civilian perpetrator fled to the U.S. to avoid host nation prosecution. However, MEJA procedures do exist for MPs to apprehend a U.S. Forces civilian perpetrator who remains in the host nation, have that perpetrator placed in a military confinement facility, and eventually have him or her escorted to the U.S. by U.S. Marshals for trial in a U.S. District Court.

MEJA is not Just Theory!

Kaiserslautern – Soldier dies from gang beating during initiation ritual

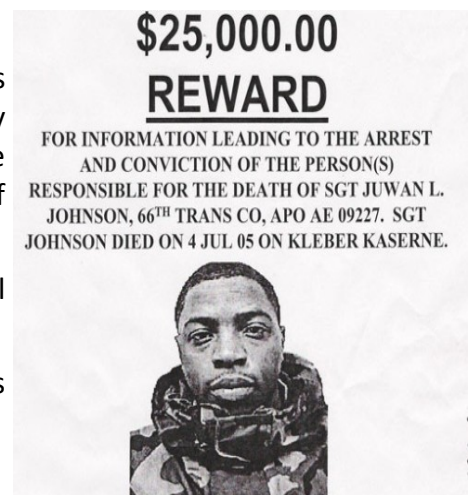
In July 2005, SGT Juwan Johnson was being initiated into the Gangster Disciples gang. As part of that initiation, gang members severely beat and kicked SGT Johnson. Although the seriousness of his condition was clearly evident and he asked for help, the gang leader prohibited anyone from taking SGT Johnson to any clinic or hospital. Instead, SGT Johnson was taken to his room and placed in his shower, where he died later that night.

Several of the gang participants were military members. After a long delay, when a witness finally came forward, those military members were eventually court-martialed. The gang leader was a Mr. Rico Williams. He was a family member husband at the time of the incident. He chose to flee back to the U.S. to try to avoid German prosecution.

A MEJA case was initiated against Mr. Williams when the Germans released jurisdiction over the offense. Mr. Williams was eventually apprehended by the FBI and tried before the U.S. District Court for the District of Columbia, where he was convicted in November 2010 of second degree murder and witness tampering.

In April 2012, Mr. Williams was sentenced to 22 years in Federal prison for his offenses.

With the MEJA statute in place, it’s a lot harder for our civilians overseas to “get away with murder.”



German & U.S. Jurists Compare Notes

Building international understanding & friendships...

by Joe Hall

How long should a member of the U.S. Forces stay in German pretrial confinement? What happens when notice of a German paternity suit comes to the quarters of a deployed Soldier? These are two of many questions that might arise on a daily basis, as we live and work in Germany.

The answers to the type of questions posed above are frequently, but not always, found in international agreements.

The NATO Status of Forces Agreement (SoFA) and its German Supplementary Agreement (SA) provide a very good framework of legal rights and privileges and duties and obligations imposed upon the host nation, and upon the U.S. Forces and its individual military and civilian members and their family members. However, the agreements cannot cover all aspects of life or the law, and they also do not cover all the details of their implementation.

Also, although the treaty words may read the same, at times the same word may have a different meaning for the host nation and the U.S. Forces. The result of that can potentially lead to misunderstanding and frustration and, in a worst case, impact our ability to perform our assigned mission.

To try and avoid diverging interpretations of the NATO SoFA and its SA, or to help fill in the blanks in circumstances where there is no specific treaty language, the Office of the Staff Judge Advocate works to build ties to the German legal community, and thereby to share and explain and advocate how we believe the treaties should be interpreted and implemented. The goal is to have a balanced and fair common understanding of the treaties that will give the U.S. Forces the greatest possible flexibility to facilitate mission accomplishment.

Recently, the Office of the Staff Judge Advocate had two opportunities to meet with German government jurists and private practitioners to compare and share understandings of U.S., German, and international law: a liaison visit to the Saarbrücken Regional Court in April and a Law Day legal liaison event held at the Sembach Community Club in May.

The Saarbrücken visit was initiated and hosted by the President of the Regional Court, Hans-Peter Freymann, and included the Kaiserslautern and Zweibrücken Regional Court Presidents, and the Attorney General of Saarbrücken, among other German guests. The U.S. Forces were represented by the 21st TSC Staff Judge Advocate, COL Ralph J. Tremaglio, III, the Chief Military Judge of the 5th Judicial Circuit, COL R. Peter Masterton, and other members of the 21st TSC OSJA staff.



Topics addressed included the “right to a speedy trial,” the use of German courts for civil actions by and against U.S. Forces personnel, and service of civil process. The topics related to the questions posed at the beginning of this article. The resulting discussion was good and helpful.

While our host was exceptionally gracious, and called for the meeting’s working language to be English, Judge Masterton (left) reciprocated by giving his presentation, on the Role and Function of the Military Judge, in German – helping to further cement the bonds of understanding and the friendships that were made or reinforced that day.

Liaison events like these provide opportunities to forge professional relationships with our German counterparts that help ensure that our legal environment remains mission responsive.

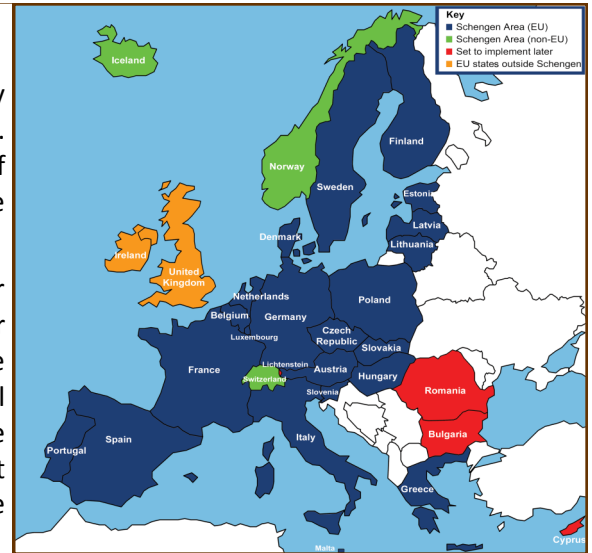
European Travel Restrictions Relaxed

For those spouses who need German visas...

by Joe Hall

One of the special things about being stationed in Germany is the ease with which you can travel to other foreign countries. France is only an hour away. Paris is a mere two-and-a-half hour train ride. You can be in Switzerland in two hours; Rome or London are only an hour or so away by air.

Most European Union member states, and some other countries such as Switzerland, made such travel even easier when they reached agreement in the city of Schengen in the Grand Duchy of Luxembourg to generally do away with internal passport controls between and among their countries. One passport check upon initial arrival in one of the agreement countries, and the visitor was free to travel throughout all the Schengen Agreement countries.



The U.S. is not a signatory to the Schengen Agreement, but those of us stationed in Europe pursuant to the NATO Status of Forces Agreement (SoFA) and living in a country given visa-free tourist privileges for the Schengen area have benefited from this relaxation in internal travel controls. We tend to take it for granted. We shouldn't.

A small but important percentage of our family member spouses come from countries for which the Schengen Treaty countries (such as Germany) require an entry visa. These countries generally include the countries of the former Soviet Union, many African countries, and the Philippines. Before those spouses can join their U.S. Forces-affiliated husbands or wives in Germany, they must comply with the procedures found in AER 600-77.

Once they comply with those procedures, and are permitted to enter Germany, they have the same NATO SoFA status in Germany as all other military and civilian component spouses. However, up until recently, it was difficult for them to travel outside of Germany. Generally, they were required to obtain a visa for any Schengen country they wanted to visit, and depending on the country, obtaining the visa could be burdensome. Some had to return to their country of origin and apply while there to the consulate of the country they wanted to visit. Others had to correspond with the consulate in Berlin of the country they wanted to visit to obtain a tourist visa.

That has now changed. Under a change in German law (*Allg. VwVorschriften zum AufenthG*) and through the diligence of our German legal assistance attorneys and the Foreign Law Branch at the USAREUR Office of the Judge Advocate, spouses coming from "entry visa required countries" are now eligible to obtain a German identity document confirming that they are residing in Germany. That document is a recognized travel document throughout the Schengen group, so from now on no additional or specific tourist visa will be required for those spouses who have the German confirmation of residence document.

The German confirmation of residence document (*eine deklaratorische Aufenthaltserlaubnis*, with the annotation, "*Inhaber unterliegen dem NATO-Truppenstatut*") can be obtained at the Foreign Residents Office (*Ausländeramt*) in the town where you live. You should take the following documentation with you to the *Ausländeramt*:

[continued on page 13...]

European Travel Restrictions Relaxed (continued)

- proof of the applicant's identity (e.g., U.S. Forces dependent ID, passport, and SoFA stamp/card);
- proof of marriage to the member of the military or civilian component of the Force who has NATO SoFA status (e.g., marriage certificate);
- proof that the applicant's spouse is a member of either the military or civilian component of the Force as set out in Article I of the NATO SoFA (e.g., copy of assignment orders, and SoFA stamp or card for civilian component members);
- a copy of the applicant's dependent travel orders;
- proof of current residence (e.g., rental contract or housing assignment document).

Those who do not need an entry visa to come to Germany (e.g., U.S. citizens), still need to carry their passport (with SoFA stamp/card for civilians) and a copy of their DA Form 31 leave form (for military personnel) when leaving Germany to tour other Schengen countries. In most cases, you will not be stopped or checked, but it can happen, and sitting at a French police station – or any police station, waiting to be expelled from that country, is not a fun-filled travel experience.

There are still some non-Schengen European countries that may require tourist visas prior to entry, so it is a good idea to check the DoD Foreign Clearance Guide at <https://www.fcg.pentagon.mil> for entry/visa requirements of the specific country you intend to visit.

Deaths, Autopsies, & Our Treaty Rights

by Joe Hall

Deaths are relatively uncommon in our military communities, where most people are young, healthy, and pretty fit. But they do happen. They can result from heart attacks or from traffic accidents or from criminal assaults.

This article addresses only the first stage of the processing of those bodies, the legal issues of: should the body go to U.S. or to German facilities – or, if an autopsy is necessary, who performs it?

Article 16 of the Supplementary Agreement (SA) to the NATO SoFA provides the answer, and it is quite easy. The U.S. Forces have the right to the deceased person's remains. The U.S. Forces also have the right to do any necessary autopsy.

Commanders, all U.S. Forces military investigators, MPs, and legal advisors need to know about Article 16, SA, and to assert the U.S. Forces' rights as set out in Article 16. They all need to know that, as a policy matter, we never waive those rights. We don't leave our dead on the battlefield; we don't send our peacetime deaths to German facilities.

If ever called upon to respond to the death of a member of the U.S. Forces who has SoFA status, the U.S. law enforcement agent and/or the legal advisor must tell the German police and/or the German prosecutor that the body only goes to the U.S. Forces Mortuary Affairs facilities located at the U.S. Forces' Landstuhl Regional Medical Center, and, if an autopsy is necessary, it will be done there.

It does not matter whether the body is found on or off post, or who has exclusive or primary concurrent criminal jurisdiction in the case. The body goes to, and any autopsy is done at, the U.S. facilities.



Criminal Custody of U.S. Forces Personnel

by Joe Hall

In the last edition of this newsletter, we addressed the status of forces (SoFA) aspects of autopsies of U.S. Forces personnel. The rule under Article 16 of the Supplementary Agreement (SA) to the NATO SoFA is relatively simple: autopsies on U.S. Forces personnel – uniformed or civilian – will be done in all circumstances only in U.S. Forces facilities. Military police, OSI/CID investigators, and legal advisors should not permit any exception to that rule; no autopsies on these persons should be conducted in German facilities.

Now, let's look at criminal custody. Criminal custody of U.S. Forces-affiliated personnel is regulated under Article 22, SA.

The custody rule is also relatively simple. We always keep, and where necessary ask for, custody of our uniformed members.

Article 22, paragraph 1(a), provides that where the U.S. Forces have jurisdiction over the criminal case, *i.e.*, exclusive jurisdiction or primary concurrent jurisdiction, or where the Germans have waived their jurisdiction, the U.S. Forces have automatic custody over the suspect/accused uniformed members. Military police, OSI/CID investigators, and legal advisors should not permit any exception to that rule.

Article 22, paragraph 2, provides that where the Germans have exclusive or unwaived primary concurrent jurisdiction and have arrested a Soldier or Airman, the arrested service member will be turned over to the U.S. Forces (without undue delay) if the U.S. Forces make a custody request. We will always make that custody request. Military police, OSI/CID investigators, and legal advisors should make that custody request to their German counterparts as soon as they are aware of the service member's arrest. If it appears that there will be any undue delay in the Germans releasing the service member, the International Law Division at the Kaiserslautern Legal Services Center or at the 21st TSC Office of the Staff Judge Advocate should be notified.

Once we have custody of the service member, we apply our own rules on custody, restriction, and pre-trial confinement.

Although we always assert our right to take custody of our uniformed members, that does not preclude close cooperation with German investigative authorities; we do continue to make the service member available for German police interviews, line-ups, and other investigative procedures.

Dependents and DoD civilian employees generally fall under German criminal custody procedures, as we have no court-martial jurisdiction over them during peacetime, something they should consider before they commit a crime.



"Let's Have Another Round..."

*Ein Fest ist eine fröhliche Zeit,
es bringt den Leuten viel Lustigkeit.*

*Für uns in der Einladung hier zu sein,
steckt eine doppelte Freude tief im Keim.*

*Natürlich,
Wein und Bier und leckeres Essen,
alles so fein, es läßt sich toll Schmecken.*

*Aber mehr, und besonders in dieser
verwirrenden Zeit,
ist die große Bedeutung
Ihre Gastfreundschaft und Brüderlichkeit.*

*So eine beispielhafte, ausgestreckte Hand,
zeigt wie Frieden und Verstand kommen
überall zu stand.*

*Und erinnert uns deutlich,
aber mit Sanftheit und Lindern,
mit gutem Willen,
ist der Weg
immer zu finden.*

*So herzlichen Dank,
in dieser gemütlichen Stunde,
und sage ich
Prost, zum Wohle --
und
noch eine Runde.*

A festival is a happy time,
bringing everyone great merriment.

For us, the invitation to be here,
holds at its core twice the delight.

Naturally,
the wine and beer and delicious food,
all so fine, tastes great.

But beyond this, and especially at this
perplexing time,
is the great significance
of your hospitality and fraternity.

Such an exemplary, outstretched hand
shows how peace and common sense
apply everywhere.

And reminds us clearly,
but with gentleness and relief,
that, with goodwill,
a path
can always be found.

So a hearty thank you
at this pleasant hour
and I say
Cheers, to your health --
and
let's have another round.

Editor's Note: Joe Hall composed this poem in German and recited it "auf Deutsch" at the Mannheim Higher Administrative Court's annual "Hoffest" in 2005, to thunderous applause from the German and American attendees. It speaks volumes about a man who loved life, sought peace, and had a deep reverence for the role of law in maintaining international order. Joe had a genius for diplomacy and a powerful way with words. These same qualities led to his selection the following year as Chief of International Law for the 21st TSC Office of the Staff Judge Advocate.



DEPARTMENT OF THE ARMY
MERITORIOUS CIVILIAN SERVICE AWARD

Mr. Joseph J. Hall

HAS RECEIVED OFFICIAL COMMENDATION
FOR MERITORIOUS PERFORMANCE OF DUTY

Directions to Kleber Kaserne: From Vogelweh, Ramstein, or Landstuhl take the A6 direction Mannheim. On your right you will see a large store called Möbel Martin. Make sure you are in the right lane as you take the Kaiserslautern Ost Ausfahrt (exit). Turn right as you leave the exit ramp and drive downhill until you reach the stop light. Turn right and proceed straight until the next stoplight. Turn left and you will be beside Kleber Kaserne. Follow the perimeter until you come to an open gate. Parking on Kleber Kaserne is difficult—allow a few extra minutes to circulate until you find an open spot. Bldg. 3210 is directly across from the former site of the Kleber Shoppette. Enter Bldg. 3210 from the door on the east end of the building.

